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CFPB, HHS and Treasury Request Information on Medical Payment Products

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On July 7, 2023, the Consumer Financial Protection Bureau (CFPB), US Department of Health and Human Services (HHS) and US Department of the Treasury (collectively, "the agencies") published a request for information (RFI) on financial products used to pay for healthcare, including medical credit cards and installment loans. The agencies indicated that they are seeking input from stakeholders to assess the rationales behind why healthcare providers may promote certain financial products and services – and whether the proliferation of such products and services may contribute to consumer harm.

Beginning with the passage of the No Surprises Act in 2021, which provides protections for consumers from "surprise" medical bills, controlling healthcare costs and managing consumer medical debt has been a priority for all three branches of government. Thus, the RFI is the latest in a series of actions by Congress, federal agencies and the Biden administration seeking to study healthcare costs and protect consumers from paying inaccurate medical bills.

Background

The use of medical payment products by consumers has evolved in recent years from a method of financing used primarily to pay for care outside of the coverage of health insurance plans to a more widespread tool used in connection with a broader set of services, including emergency room visits and primary and specialty care. As suggested in the RFI, and highlighted in CFPB Director Rohit Chopra's remarks to Congress on July 11, the agencies are concerned that the broader adoption of these services is a response to the growing financial challenges associated with paying for medical care.

Given these market factors, the agencies note that the extension of credit in connection with the provision of healthcare may have unintended negative downstream consequences for consumers and healthcare providers. The RFI lists several associated concerns, including:

- **The proliferation of medical payment products may create a negative experience for patients.** The agencies note that patients trust their healthcare providers to offer healthcare-related expertise and may place similar trust in the financing products offered by those providers. However, healthcare providers or their staffs may not have the requisite information or proficiency needed to answer patients' questions about the terms and conditions of financial products. Furthermore, patients may feel pressure to make financial decisions while under physical or emotional stress associated with their healthcare needs.
- **Medical payment products may create the wrong incentives for healthcare providers.** The agencies suggest that healthcare providers may be incentivized to promote medical credit cards and loans because these products result in faster payment and reduced administrative costs compared to alternatives like financial assistance or provider-administered payment plans. In addition, tax-exempt hospitals may steer patients to more profitable medical payment products and away from certain financial assistance for low-income patients required by the Affordable Care Act. Finally, payment products may enable healthcare providers to charge higher prices to uninsured, self-paying or out-of-network patients who would otherwise be unable to pay such prices and might instead seek more affordable care.
- **Tying payment products to healthcare can be used to restrict access to care.** As it is, the RFI notes that people may delay or avoid medical care out of concern about costs or debt, or because they believe they will be turned away due to their unpaid medical bills. If payment products contribute to higher healthcare costs, they also may act as a deterrent for patients seeking care.

Information requested

The RFI seeks information on the use of medical payment products, the terms of these products and their impact on consumers. In particular, the agencies appear most interested in understanding both the present impact of these products on consumers and how the structure of the market may inform future trends. To this end, the agencies are broadly requesting information, such as:

- Total outstanding consumer debt on medical credit cards, medical installment loans and other medical payment products.
- Demographic information regarding consumers who use these products.
- Market concentration in the industry.
- The types of financial entities that offer medical credit cards and loans.
- How plans' and issuers' billing and reimbursement practices impact healthcare providers' decisions to offer and promote medical payment products.
- Terms and conditions, as well as disclosures, related to such products.

Furthermore, each agency included specific questions to commenters. The CFPB, in particular, focused on the mechanics of these payment products, including through requests related to the use of credit or "propensity to pay" scores, debt collection practices and underwriting procedures.

This RFI is consistent with two broader trends in financial services regulation under the Biden administration. First, agencies are taking a collaborative approach to consumer protection, through supervision, information gathering and enforcement. Second, the CFPB continues to spearhead efforts focused on broader financial markets, with a specific emphasis on protecting populations the CFPB believes to be vulnerable – a focus that also is evident in this RFI.

Comments are due 60 days after publication in the Federal Register.

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